

MICAH L. RUBBO (CSBN 267465)
U.S. Department of Justice
Antitrust Division
450 Golden Gate Avenue
San Francisco, CA 94102
micah.rubbo@usdoj.gov
Telephone: (415) 934-5300

Attorney for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESLEY BARTA,

Defendant.

Case No. CR 4:13-00413 PJH

**UNITED STATES' SENTENCING
MEMORANDUM AND MOTION FOR
DOWNWARD DEPARTURE PURSUANT
TO U.S.S.G. §5K1.1**

Date: December 15, 2017

Time: 9:00 a.m.

Court: Hon. Chief Judge Phyllis J. Hamilton

The United States respectfully requests that this Court sentence defendant Wesley Barta to (1) serve five months of custody, based on the government's motion for a substantial-assistance downward departure of 60 percent from the low end of the applicable Guidelines range; (2) serve three years of supervised release; and (3) pay a criminal fine of \$7,500 and a \$100 special assessment. This sentence is consistent with the parties' Fed. R. Crim. P. 11(c)(1)(A) and (B) plea agreement.

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BACKGROUND

Defendant Wesley Barta was an hourly employee of codefendant Michael Marr. Presentence Report (PSR) ¶ 14. Although Barta had worked for Marr for many years in other capacities, in approximately June 2008 he began representing Marr at the foreclosure auctions. *United States v. Michael Marr, et al.*, Case No. CR 14-580 PJH (N.D. Cal.), Trial Tr. vol. 6, 1415-17. On his first day of work, Marr attended the auction with Barta and instructed him that part of his job would be to participate in the bid-rigging conspiracies on his behalf. *Id.* at 1443-44. Marr had been participating in the rounds himself but wanted to expand his business. *Id.* at 1444. Marr demonstrated how the rounds worked and introduced Barta to the other members of the conspiracy. *Id.* at 1444-45. After learning about the conspiracy, Barta told Marr that he was not comfortable participating in rounds. *Id.* at 1445-46; PSR ¶ 17. Marr told Barta that he had no choice and it was part of his job. *Id.* Because Barta needed to support his family, he agreed. PSR ¶ 17.

At first Barta attended both Contra Costa and Alameda County, but by the end of 2008 he was exclusively attending the Contra Costa auctions. *Id.* at 1417-19. From June 2008 to January 2011, Barta attended the auctions on a daily basis and bid on properties on behalf of Marr and his clients. *Id.* at 1417-19, 1424-25. While at the auctions, Barta was always in direct communication with Marr by phone. *Id.* at 1446-47; PSR ¶¶ 15-16. Marr's authority was needed before Barta could make any decisions at the auctions. For example, Marr directed Barta when and whether to agree to stop bidding at the public auction. *Marr*, Trial Tr. vol. 6 at 1449. He directed Barta on whether and how much to bid at both the public auction and in the rounds. *Id.* at 1448. Barta even needed Marr's authority to be the one to buy the property at the public auction in order to lead the round. *See id.* at 1457. In short, Marr dictated Barta's every move at the auction. As Barta put it in the *Marr* trial, Barta "was just there at his beckon." *Id.*

Barta was also responsible for collecting and distributing round money on behalf of Marr. *Marr*, Trial Tr. vol. 7 at 1586. On nearly a daily basis, Barta distributed payoff money as directed by Marr and collected payoff money from coconspirators to deliver to Marr. *Id.* at 1585-86. Barta did not keep any portion of the round money. *Id.* All the money was paid to

1 Marr. *Id.*

2 In total, defendant personally participated in rigging approximately 84 auctions in County
3 Costa County on behalf of Marr. He purchased properties worth approximately \$5.7 million
4 through the conspiracy for Marr. Throughout this entire time period, Barta repeatedly reminded
5 Marr that he was uncomfortable participating in rounds. *Marr*, Trial Tr. vol. 7 at 1654. Marr's
6 response was always simply that it was a part of his job and "just do it." *Id.* But finally, in late
7 2009 or early 2010, Barta became so uncomfortable with this part of his job that he told Marr he
8 would no longer participate in rounds. *Id.*

9 When questioned by the FBI at the beginning of the investigation, defendant admitted to
10 participating in rounds on Marr's behalf. PSR ¶ 14. In June of 2012, defendant entered a guilty
11 plea to one count of mail fraud and one count of bid rigging. In October 2016, that plea was
12 withdrawn by stipulation, defendant entered a guilty plea to the bid-rigging count only pursuant
13 to a revised plea agreement, and the mail fraud count was dismissed. Minute Entry, Doc. No. 28.

14 ARGUMENT

15 A. Sentencing Guidelines Calculations

16 1. Criminal History

17 In Paragraph 12 of the Plea Agreement, the parties agree that defendant's Criminal
18 History Category is determined by the Court. The PSR calculates defendant's Criminal History
19 Category as I, since he has no prior criminal history. The United States agrees. PSR ¶ 37.

20 2. Offense Level

21 The PSR calculates the total offense level as 13, consistent with the plea agreement. PSR
22 ¶ 32. This calculation includes a one-level increase to the base offense level of 12 for conduct
23 involving the submission of non-competitive bids, a two-level increase for a volume of
24 commerce exceeding \$1 million, and a downward reduction of two levels for acceptance of
25 responsibility. U.S. Sentencing Guidelines Manual ("U.S.S.G.") §§2R1.1(b)(1) & (b)(2)(A),
26 3E1.1(a) (U.S. Sentencing Comm'n 2010).

27 Under the Guidelines, an offense level of 13 and Criminal History Category of I results in
28 a sentence ranging from 12 to 18 months of imprisonment.

1 **3. Fine and Restitution**

2 The PSR calculates a fine range of \$57,567 to \$287,839, which is consistent with the plea
3 agreement. PSR ¶ 74; U.S.S.G. §2R1.1(c)(1) (fine range shall be from one to five percent of the
4 volume of commerce). The government agreed however to recommend a fine between \$7,500
5 and \$75,000, which was the fine range in the original plea agreement. The government
6 recommends a \$7,500 fine.

7 **B. Basis for Downward Departure for Substantial Assistance**

8 Pursuant to Section 5K1.1 of the Guidelines, the government moves for a downward
9 departure based on defendant's substantial assistance to the investigation. The government
10 recommends a 60 percent reduction, resulting in a sentence of approximately five months. This
11 is the government's highest recommendation for substantial assistance, reflecting the
12 extraordinary cooperation provided by defendant in the investigation and prosecution of these
13 cases over several years.

14 The first consideration is the timing of defendant's decision to plead guilty and cooperate.
15 Defendant agreed to plead guilty at a midpoint in the investigation in 2013, but well before many
16 of his coconspirators and before any of the indictments in the case. Significantly, he was the first
17 – and only – person within Community Fund to plead guilty and cooperate in the investigation.

18 The government's recommendation is also based on the extent and value of the
19 information provided by defendant during the investigation. Defendant sat for at least 10
20 interviews with the government. During those interviews, defendant provided corroborating
21 information regarding the operation of the conspiracy, authenticated thousands of Community
22 Fund records, and provided an account of various subjects' conduct in furtherance of the
23 conspiracy. He also spent many hours meticulously identifying the handwriting of various
24 employees at Community Fund.

25 Lastly, the downward departure recommendation reflects the extensive trial testimony
26 provided by defendant in the prosecution of the *Joyce*, *Guillory*, and *Marr* trials. He also made
27 himself available to testify in the *Victor Marr* trial, though he was not ultimately called as a
28 witness. As the Court is aware, defendant's trial testimony was particularly instrumental in the

1 *Marr* trial. He was the only witness who could provide insight into the inner workings of the
2 *Marr* organization and provided the foundation for the introduction of hundreds of highly
3 incriminating Community Fund records. The government is mindful that this was a particularly
4 difficult task for defendant Barta because of the close relationship he shared with the defendants
5 on trial. In all three trials, his testimony was credible, accurate, and reliable. The summary
6 charts and demonstratives introduced through defendant in all three trials reflected many hours
7 of preparations during which he carefully reviewed and summarized Community Fund records
8 for hundreds of transactions.

9 For these reasons, a 60 percent downward departure for substantial assistance to the
10 investigation and prosecution of these cases is appropriate.

11 **C. Sentencing Recommendation**

12 The government's recommendation of five months is reasonable and not greater than
13 necessary in light of the factors articulated in 18 U.S.C. § 3553. The most compelling factors
14 weighing in favor of the recommendation are the need for the sentence to reflect the seriousness
15 of the offense, promote respect for the law, and afford adequate deterrence to future bid-rigging
16 offenses and white-collar crime generally, as the government has argued in the related cases.

17 However, an assessment of the history and characteristics of defendant should take into
18 account certain mitigating factors previously identified by the Court for similarly situated
19 individuals. These factors include defendant's decision to accept responsibility and cooperate in
20 the investigation, his status as a first-time offender, the fact that he did not personally profit from
21 the conspiracy but acted on behalf of his employer, and that he was only charged in one county.¹
22 While the government is recommending custody here, as it has in all the related cases, these
23 factors have led the Court to impose probationary sentences for other defendants. These factors
24 apply with equal if not greater force to defendant Barta.

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26 ¹ Another factor the Court has considered is the defendant's willingness to pay restitution.
27 Barta's plea agreement does not require him to pay restitution because he did not receive any of
28 the illegal payoffs and therefore did not owe any restitution. The government therefore sought
restitution from his employer Michael Marr.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court sentence defendant Wesley Barta to (1) serve five months of custody; (2) serve three years of supervised release; and (3) pay a fine of \$7,500 and a \$100 special assessment.

Dated: December 8, 2017

Respectfully submitted,

/s/

MICAH L. RUBBO
United States Department of Justice
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